

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ELAINE M. CAPULLI)	
Claimant)	
VS.)	
)	Docket Nos. 233,891 & 247,579
THE BOEING COMPANY)	
Respondent)	
AND)	
)	
INSURANCE COMPANY STATE OF)	
PENNSYLVANIA c/o)	
AMERICAN INTERNATIONAL GROUP)	
Insurance Carrier)	

ORDER

Respondent appeals the February 2, 2000, Order of Administrative Law Judge Nelsonna Potts Barnes. Claimant was referred to C. Reiff Brown, M.D., pursuant to K.S.A. 44-516, for an independent medical evaluation for a rating and restrictions, if any.

ISSUES

Did the Administrative Law Judge exceed her jurisdiction in ordering a second independent medical examination pursuant to K.S.A. 44-516?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented, the Appeals Board finds that the appeal by respondent should be dismissed and this Order should remain in full force and effect.

Respondent objects to the Administrative Law Judge's use of K.S.A. 44-516 to order a second independent medical examination. Respondent contends this exceeds the Administrative Law Judge's jurisdiction, is a final order and, therefore, appealable, and that K.S.A. 44-516 prohibits an independent medical examination unless there is a dispute as to the claimant's injury.

K.S.A. 1999 Supp. 44-551 allows review by the Workers Compensation Appeals Board of all final orders, awards, modifications of awards or preliminary awards under K.S.A.

1999 Supp. 44-534a and amendments thereto made by an administrative law judge. The referral by the Administrative Law Judge under K.S.A. 44-516 for an independent medical examination does not constitute a final order, award, or modification of award, and was not ordered pursuant to K.S.A. 1999 Supp. 44-534a or amendments thereto. Therefore, the appeal brought by respondent is not one over which the Workers Compensation Appeals Board has jurisdiction under K.S.A. 1999 Supp. 44-551 or K.S.A. 1999 Supp. 44-534a. Therefore, respondent's appeal in this matter should be dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the appeal of respondent in the above matter should be, and is hereby, dismissed, and the Order of Administrative Law Judge Nelsonna Potts Barnes dated February 2, 2000, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of March 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Wichita, KS
Eric K. Kuhn, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director